

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

JAMES HOWARD SHIFFLETT,

Petitioner,

v.

**CIVIL ACTION NO. 3:05-CV-59
CRIMINAL ACTION NO. 3:99-CR-42
(BAILEY)**

UNITED STATES OF AMERICA,

Respondent.

JUDGMENT ORDER

By Standing Order entered on March 24, 2000, and entered in this case on July 12, 2005, this action was referred to United States Magistrate Judge James E. Seibert for submission of proposed report and a recommendation ["R & R"]. Magistrate Judge Seibert filed his R & R on September 22, 2006 [Civ. Docket 13]. In that filing, the Magistrate Judge recommended that this Court GRANT ground three of the § 2255 petition [Civ. Docket 1] and to re-sentence the Petitioner so that he may file a direct appeal. The Magistrate Judge further recommended that because the issue of the alleged double-counting would then be viable on direct appeal, it is premature for the Court to make a ruling as to that issue in the instant petition and, therefore, ground five should be DISMISSED without prejudice.

The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. ***Thomas v. Arn***, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); ***Snyder v. Ridenour***, 889 F.2d 1363, 1366 (4th Cir. 1989); ***United States v. Schronce***, 727

F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Seibert's R & R were due by October 6, 2006, pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). No objections have been filed.

The Court adopts the recommendations of Magistrate Judge Seibert. Accordingly, the Court hereby **GRANTS** ground three of the petition and the Petitioner will be re-sentenced so that he may file a direct appeal. Further, the Court **ORDERS** that because the issue of the alleged double-counting would be viable on direct appeal, it is premature for the Court to make a ruling as to that issue in the instant petition. Accordingly, ground five shall be **DISMISSED** without prejudice.

The Clerk is directed to mail a certified copy of this Judgment Order to all counsel of record, the plaintiff, pro se, and Magistrate Judge Seibert.

DATED: May 1, 2007

/s/ John Preston Bailey
HON. JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE